

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 215 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MORBI COTTON MERCHANTS

INDUSTRIAL CORPORATION

Versus

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MORVI MUNICIPALITY

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Appearance:

MR BD KARIA for Appellant

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 12/02/97

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ORAL JUDGEMENT

1. The appellant herein is the original plaintiff, whereas the respondent is the original defendant.
2. The plaintiff had filed suit against the defendant against recovery sought to be made by the defendant in respect of education cess payable by the plaintiff as an owner of immovable property. The plaintiff averred and contended that the relevant amount of education cess viz. Rs.9714/- had already been paid

by the plaintiff to the Mamlatdar (a Revenue Officer subordinate to the Collector), and that therefore the municipality in seeking to recover education cess, at least to the aforesaid extent, had no authority to make such a demand and that the same would amount to double taxation.

3. The trial court passed a decree in favour of the plaintiff.

4. The defendant, being aggrieved by the said decree, preferred an appeal before the lower appellate court. The lower appellate court, after discussing the various facts and the law applicable to such facts, reversed the decree of the trial court and dismissed the suit. The appellant-plaintiff has, therefore, preferred the present Second Appeal under section 100, CPC, challenging the lower appellate court judgement and decree.

5. From the facts of the case it appears that there is no dispute that at least a part of the demand of education cess made by the defendant-municipality in the sum of Rs.9714/- had been paid by the plaintiff to the Mamlatdar. There also does not appear to be any dispute that the said payment was made in respect of the education cess payable by the plaintiff.

6. However, what requires to be considered here is not the equity in the matter, but the legality of such payment, and whether the making of such payment to "X" or to "Y" would absolve the plaintiff of his obligation to make payment to the designated authority in the fulfillment of his obligations under the relevant statute.

7. The tax known as education cess is levied by the Gujarat Education Cess Act, 1962, wherein the charging section is section 12. The plaintiff does not dispute his obligation to pay the education cess on the basis of the valuation of the property. In the context of the levy imposed by section 12, the said Act specifically contemplates the manner and method of recovery of the tax levied under section 12. Section 15 of the said Act and particularly sub-section (1) thereof deals with the authority who shall collect the tax. The operative word used in sub-section (1) is "shall". Clause (b) of sub-section (1) specifically contemplates that such tax shall be collected "by the respective local authorities concerned". Thus, under section 15(1)(b) the respective local authorities have both the right as also obligation

to collect the tax imposed by section 12 of the said Act.

8. Sub-section (2) of section 15 prescribes the mode of collection. In this context, clause (b) of sub-section (2) specifically contemplates that the manner of collection of the tax (imposed under section 12) shall be in the same manner in which the property tax is collected in that area "under the relevant local authority law". In other words, the manner and method of collection of education cess shall be the same as the manner and method of collection of municipal tax imposed by the Gujarat Municipalities Act.

9. It is, therefore, crystal clear that by virtue of section 15 which is a complete scheme for the collection of tax imposed by section 12, the Mamlatdar and/or the Collector and/or any other authority under the Bombay Land Revenue Code, is not authorised to collect the tax, nor is any such authority or officer authorised to issue a valid receipt so as to discharge the assessee from his obligation to pay tax levied under section 12. Thus, any payment the plaintiff may have made to the Mamlatdar would not discharge the plaintiff from his obligation to pay the tax levied under section 12, or to resist the collection of such tax, when such collection is sought to be made in the manner and the method prescribed by section 15. In the circumstances of the case it may be that the plaintiff has a good case in equity; however equitable considerations cannot override the statute. As a result thereof, there is no substantial question of law involved in the present appeal under section 100, CPC and the same is therefore dismissed.

11-02-1997 [Y.B. BHATT J.]